

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EDWARD A. BRITTINGHAM,	§	
	§	No. 396, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0708034898
Plaintiff Below,	§	0712014071
Appellee.	§	

Submitted: November 14, 2008

Decided: January 30, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 30th day of January 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellant, Edward A. Brittingham, filed this appeal from the Superior Court's order of July 23, 2008, that denied his motion for modification and reduction of sentence pursuant to Superior Court Criminal Rule 35(b) ("Rule 35(b)"). The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the basis that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) Brittingham was arrested on August 26, 2007 and was charged with attempted theft, possession of burglar's tools, criminal mischief and resisting arrest. Thereafter, Brittingham was arrested on December 13, 2007 and was charged with third degree burglary and theft from a senior. On February 14, 2008, Brittingham pleaded guilty to attempted theft and third degree burglary. The remaining charges were nolle prossed.

(3) On June 27, 2008, the Superior Court sentenced Brittingham, effective May 15, 2008, to two years at Level V with credit for 94 days for third degree burglary. For attempted theft, the Superior Court sentenced Brittingham to two years at Level V suspended after one year.

(4) On July 9, 2008, Brittingham filed a motion for credit for time served. Brittingham sought to have 94 days of credit applied to the June 27, 2008 sentence imposed for attempted theft. He also sought to have the effective date of the sentence changed from May 15, 2008 to December 13, 2007.

(5) By order dated July 14, 2008, the Superior Court denied Brittingham's motion for credit for time served as procedurally time-barred and as substantively without merit. Brittingham did not appeal.

(6) On July 21, 2008, Brittingham filed a motion for modification and reduction of sentence. Again, Brittingham sought to have 94 days of

credit applied to his sentence for attempted theft and to have the effective date of the sentence changed to December 13, 2007.

(7) By order dated July 23, 2008, the Superior Court denied Brittingham's motion on the basis that the Court would not consider repetitive requests for reduction or modification of sentence. This appeal followed.

(8) It is manifest on the face of Brittingham's opening brief that this appeal is without merit. Under Rule 35(b), repetitive requests for sentence modification will not be considered.¹ There was no abuse of discretion on the part of the Superior Court in denying Brittingham's motion for modification and reduction of sentence as repetitive.²

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹ Del. Super. Ct. Crim. R. 35(b).

² *Correa v. State*, 2007 WL 4110622 (Del. Supr.).